

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BEATRIZ Q. BENITO and ROBERT  
R. BENITO,

2:11-CV-00295-PMP-GWF

Plaintiffs,

**ORDER**

vs.

VERICREST FINANCIAL,  
INC., *et al.*,

Defendants.

Before the Court for consideration is Defendant Vericrest Financial, Inc., and the Bank of New York Mellon's Motion for Judgment on the Pleadings (Doc. #13) filed June 21, 2011. Having considered the arguments set forth in this fully briefed motion, and having also considered the arguments of counsel presented at the hearing conducted October 11, 2011, the Court finds that Defendants' Motion for Judgment on the Pleadings must be granted.

In their Complaint, Plaintiffs allege eight separate Causes of Action for (1) unfair lending practices; (2) fraud; (3) deceptive trade practices; (4) intentional misrepresentation; (5) negligent misrepresentation; (6) breach of the implied covenant of good faith and fair dealing; (7) breach of contract; and (8) unjust enrichment.

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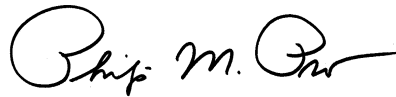
1 At the hearing conducted October 11, 2011, Plaintiffs conceded that their  
2 claims for fraud, intentional misrepresentation and breach of contract are  
3 infirm. However, for the reasons set forth in Defendants' Motion (Doc. #13) and  
4 Reply Memorandum (Doc. #18), the Court finds Plaintiffs' remaining claims also  
5 fail.

6 Plaintiffs' claim for unfair lending practices must fail because the statute  
7 upon which Plaintiff relies, N.R.S. 598D.100(1)(b) did not come into effect until  
8 after Plaintiffs' entered the loan at issue. Plaintiffs' claims for fraud, deceptive trade  
9 practices, intentional misrepresentation and negligent misrepresentation all sound in  
10 fraud and are not plead with requisite particularity and fail to specify any  
11 misrepresentations made by moving Defendants. Plaintiffs' claim for breach of the  
12 covenant of good faith and fair dealing fails because Defendants have no duty to  
13 negotiate a loan modification of Plaintiffs nor are there facts giving rise to a special  
14 relationship between the Parties which could be deemed to create and implied  
15 covenant. Finally, Plaintiffs' unjust enrichment claim must be dismissed because  
16 such a claim is not available where there is an express, written contract that covers  
17 the subject matter of the dispute.

18 **IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss  
19 (Doc. #13) is **GRANTED** and that Plaintiffs' Complaint is hereby dismissed.

20 **IT IS FURTHER ORDERED** that Defendants' Motion for Stay of  
21 Litigation and Discovery Proceedings Pending a Determination on Motion of  
22 Vericrest Financial, Inc., and the Bank of New York Mellon, as Trustee, for  
23 Judgment on the Pleadings (Doc. #19) is **DENIED** as moot.

24 DATED: October 17, 2011.



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PHILIP M. PRO  
26 United States District Judge